

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No. 1835 of 2019

Marutharaj

... Petitioner

-vs-

1.The State of Tamil Nadu

Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2.The District Magistrate and District Collector,
Office of the Collectorate,
Tiruppur City,
Tiruppur.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus directing to produce the body of the detenu Siva @ Sivaraman, son of Marudharaj, aged 27 years, presently confined at Central Prison, Coimbatore before this Court and set him at liberty forthwith, after calling for the records pertaining to the detention order dated 05.08.2019 made in Cr.M.P.No.04/Goonda/2019 passed by the second respondent, quash the same.

For Petitioner : Mr.B.Mohan

For Respondents : Mr.R.Prathap Kumar
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the father of the detenu, Siva @ Sivaraman, son of Marudharaj, aged 27 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.04/Goonda/2019 dated 05.08.2019, holding to be a

"Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. The main argument of the learned counsel appearing for the petitioner is that the case relied on by the detaining authority is not similar in nature and the offence in ground case are totally different. Therefore, the likelihood of the detenu coming out on bail is not there and the subjective satisfaction arrived by the detaining authority is not proper.

4. For appreciating the contentions raised by the learned counsel for the petitioner, the relevant averments in para 5 of the grounds of detention are extracted below:

"4. I am aware that Thiru. Siva alias Sivaraman now lodged at Central Prison, Coimbatore as a remand prisoner in Palladam Police Station Crime No.736/2019 under Section 395 r/w 397 IPC case and his remand period has been extended in the above cases till 16.08.2019. I also aware that he has not moved bail petition in the abovesaid case in any court till the date. However, it is real possibility coming out bail in the above said case in future by filing bail petition before the concerned courts. Because, I am aware that the accused Madhankumar, who was arrested in Tiruppur District, Vellakovil Police Station Crime No.437/2016 under Sections 365A, 365, 394 r/w 397 IPC was released on bail by the order of the High Court of Madras, in Crl.O.P.No.22229/2016 dated 15.10.2016. Accordingly, if Siva alias Sivaraman has been released on bail by filing bail petition in the above said case before the concerned court, he will indulge in such activities continuously, it has been revealed on consideration of antecedents. "

5. From a perusal of the detention order, it is seen that the detaining authority has taken into consideration similar case registered in Tiruppur District, Vellakovil Police Station Crime No.437/2016 under Sections 365A, 365, 394 r/w 397 IPC was released on bail by the order of the High Court of Madras, in Crl.O.P.No.22229/2016 dated 15.10.2016 and therefore, there is a real possibility of the detenu coming out on bail in the and ground case in Crime Nos.736/2019 and indulge in such activities prejudicial to the maintenance of public order. The similar case

relied on by the authority was registered for the offences u/s 365A, 365, 394 r/w 397 IPC whereas the ground case were registered for the offence under Section 395 r/w 397 IPC. Therefore, there is non-application of mind on the part of the detaining authority in not considering the similar case for arriving at subjective satisfaction. Hence the impugned order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.04/Goonda/2019 dated 05.08.2019 passed by the second respondent is set aside. The detenu, namely, Siva @ Sivaraman, son of Marudharaj, aged 27 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Office of the Collectorate,
Tiruppur City,
Tiruppur.
- 3.The Superintendent,
Central Prison,Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Mohan, Advocate, S.R.No. 94266

H.C.P. No. 1835 of 2019

EV (CO)

GN (31/12/2019)